



Fire Program Analysis – Preparedness Module Native American Tribal Governments

Date: August 30, 2004

Issue: There is a unique legal relationship between the federal government and Indian Tribal Governments. The inclusion of tribes in local Fire Planning Units (FPU) will require a sound foundation in applicable laws, regulations, executive orders, and agency direction to build a sound interagency partnership.

Background: There are several concepts important to understanding the unique relationships with Native American Tribal Governments, and they include:

❖ **Government to Government Relations:**

Government to Government Relations is the formal relationship that exists between agencies of the Federal Government and tribal governments under the laws of the United States. Tribal governments are considered domestic sovereignties with primary and independent jurisdiction (in most cases) over tribal lands. Concerning BLM actions, the same level of consideration and consistency review provided to other agencies or governmental jurisdictions must be afforded to Indian tribes.

(Bureau of Land Management's General Procedural Guidance for Native American Consultation H8160-1)

❖ **Tribal Sovereignty**

This was first addressed in the U.S. Constitution (Article I, Section 8 and Article VI). For Indian tribes that have Federal recognition, this is the inherently governmental power from which all specific political powers are derived. Indian governmental powers, with some exceptions, are not powers granted by Congress, but are inherent powers of a limited sovereignty that have never been extinguished. Congress has the authority to limit or abolish inherent right to self-government and no state may impose its laws on a reservation.

The Supreme Court first recognized the inherent right of tribal sovereignty in an 1832 case, *Worcester v. Georgia*. *Worcester* decided the question of whether the State of Georgia could impose its laws on the Cherokee Indian Reservation, a reservation located within the state's borders. In holding that Georgia could not extend its laws within the reservation, the Court stated:

"Indian Nations (are) distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States...Indian nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil from the immemorial...The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described in which the laws of Georgia and the citizens of Georgia, have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the Acts of Congress."

The *Worcester* doctrine of inherent tribal sovereignty has undergone some changes over the years, but its basic premise remains the same. An Indian tribe is a distinct political

government. Congress has the authority to limit or even abolish tribal powers. Absent congressional action, a tribe retains its inherent right to self-government, and no state may impose its laws on the reservation. The Court reaffirmed this principle in 1991: “Indian tribes are domestic dependent nations,” which exercise inherent sovereign authority over their members and territories. Moreover, in recent years Congress has made a determined effort to strengthen tribal self-government. As the Supreme Court remarked in 1983, Congress appears “firmly committed to the goal of promoting tribal self-government, a goal embodied in numerous Federal statutes.” (*Forest Service National Resource Guide to American Indian and Alaska Native Relations*)

❖ Self Governance and Self Determination

Self Governance - First stated in modern terms by former President Nixon in 1970 as “Self Determination,” this refers to the ability of Indian tribal governments to make decisions that affect either the general tribal population or tribal assets – a modern U.S. Indian policy that reinstates the independent decision making process of Indian tribal entities that had existed before European contact. In 1982, Congress passed new authorities whereby Indian tribes could sign a compact directly with the Secretary of the Interior without involving the Bureau of Indian Affairs in the delivery of Federal services. Using appropriations formerly sent through the Bureau of Indian Affairs, Indians can now prioritize their own expenditures of Federal funds. (*Forest Service National Resource Guide to American Indian and Alaska Native Relations*)

Self Determination - Decision-making control over one's own affairs and the policies that affect one's life. This is also the name of the federal government's policy toward Indian nations, beginning in 1978.

❖ Trust Responsibilities

This term has never been defined by the U.S. Congress, any President, or any Cabinet official. Generally, it is a set of principles and concepts outlining the responsibilities of the U.S. Government to act as the trustee of Indian people and Indian-owned assets. The U.S. Government, through the President, has certain responsibilities to protect Indian property and rights, Indian lands, and resources. The trust responsibility may involve a fiduciary obligation in which the President, through the Secretary of the Interior, acts as the trustee of the Indian assets. Fulfilling or redeeming a trust responsibility, can best be reflected or demonstrated as a matter of action; a stream that was protected, a site that was maintained intact, a property right that has been left unaffected by the Federal action. The writing of an environmental document is not an example of fulfillment of a trust responsibility. (*Forest Service National Resource Guide to American Indian and Alaska Native Relations*)

❖ Consultation

Includes, but is not limited to: prior to taking any action with potential impact upon American Indian and Alaska native nations, providing for mutually agreed protocols for timely communication, coordination, cooperation, and collaboration to determine the impact on traditional and cultural life-ways, natural resources, treaty and other federally reserved rights involving appropriate tribal officials and representatives throughout the decision-making process, including final decision-making and action implementation as allowed by law, consistent with a government to government relationship. (*U.S. Department of Energy American Indian & Alaska Native Tribal Government Policy*)

❖ **Protection of Indian Religion and Culture**

Indian Sacred Sites: This is the title of Executive Order number 13007 signed on May 24, 1996 by the President that directs federal agencies that manage federal lands to accommodate access to and ceremonial use of Indian sacred sites and avoid adversely affecting the physical integrity of such sacred ties. (*Guide on Consultation and Collaboration with Indian Tribal Governments*)

Cultural Resources: Include, but are not limited to: archaeological materials (artifacts) and sites dating to the prehistoric, historic, and ethno-historic periods that are located on the ground surface or are buried beneath it; natural resources, sacred objects, and sacred objects, and sacred sites, that have importance for American Indian and Alaska native peoples; resources that the American Indian and Alaska native nations regard as supportive to their cultural and traditional life-ways. (*U.S. Department of Energy American Indian & Alaska Native Tribal Government Policy*)

Specific lists of action items that each local administrative unit should undertake can not be provided. Four general principles are the best advice available for local units working with tribes:

- ❖ **Indian tribal governments possess inherent powers of self-government.**
- ❖ **No two tribal governments are exactly alike.**
- ❖ **There are no single or standard answers for any given issue that can be equally applied to all tribes.**
- ❖ **Local administrative units need to communicate and collaborate directly with each sovereign tribe about related laws, treaties, policies, and FPU activities.**

Recommendation: Participants in a Fire Planning Unit (FPU) should become familiar with the foundation documents related to Native American Tribal Governments. The following documents can provide the foundation and perspective for understanding federal agency and bureau responsibilities.

Executive Order 13175--Consultation and Coordination with Indian Tribal Governments
<http://ceq.eh.doe.gov/nepa/regs/eos/eo13175.html>

Native American Consultation
<http://www.codetalk.fed.us/Glossary.htm>

US DOI, H-8160-1, Guidance for Native American Consultation
<http://www.blm.gov/nhp/efoia/wo/handbook/h8160-1.html>

Forest Service National Resource Guide to American Indian and Alaska Native Relations
<http://www.fs.fed.us/people/tribal/>